

CUSTOMER CONTRACT REQUIREMENTS
P321
CUSTOMER CONTRACT 4100946200

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial item Section 3 below.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007). This clause applies customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if th October 1, 2010 to increase the Simplified Acquisition Threshold.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010). This clause applies only if this contract exceed promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cogn be retained in the subcontract file of the awarding contractor."

52.203-13 Contractor Code of Business Ethics and Conduct (APR 2010). This clause applies only if this contract is in excess of \$5,000,000

52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its pri Federal Government.

52.215-21 Requirement for Certified Cost or Pricing Data or Information Other Than Certified Cost and Pricing Data - Modifications forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (MAR 2007).

52.222-35 Equal Opportunity for Veterans. (SEP 2010). This clause applies only if this contract is \$100,000 or more.

52.222-36 Affirmative Action For Workers With Disabilities (OCT 2010). This clause applies only if this contract exceeds \$15,000.

52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (DEC 2010).

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e

52.223-11 Ozone Depleting Substances (MAY 2001).

52.225-1 Buy American Act- Supplies (FEB 2009).

52.225-5 Trade Agreements (NOV 2012). In paragraph (b), the phrase "in the provision entitled 'Trade Agreement Certificate' " is deleted.

52.225-13 Restriction on Certain Foreign Purchases (JUN 2008).

52.227-19 Commercial Computer Software - Restricted Rights (DEC 2007).

52.244-6 Subcontracts for Commercial Items (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered l

52.245-1 Government Property (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. " in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

2. Commercial Items If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the following FAR/DFARS clauses are inserted in lieu thereof:

52.203-13 Contractor Code of Business Ethics and Conduct (APR 2010). This clause applies only if this contract is in excess of \$5,000,000

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010). This clause applies if this

52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its prime contractor is debarred, suspended or proposed for debarment by the Federal Government.

52.219-8 Utilization of Small Business Concerns (JAN 2011).

52.222-26 Equal Opportunity (MAR 2007).

52.222-35 Equal Opportunity for Veterans. (SEP 2010). This clause applies only if this contract is \$100,000 or more.

52.222-36 Affirmative Action For Workers With Disabilities (OCT 2010). This clause applies only if this contract exceeds \$15,000.

52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (DEC 2010).

52.222-41 Service Contract Act of 1965 (NOV 2007). This clause applies only if this contract is subject to the Act.

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e)

52.222-54 Employment Eligibility Verification (JUL 2012).

This clause applies to all subcontracts that (1) are for (i) commercial or noncommercial services (except for commercial services that are part of the contract or modifications performed by the COTS provider and are normally provided for that COTS item), or (ii) construction; (2) has a value of more than \$100,000.

52.244-6 Subcontracts for Commercial Items (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by the Buyer.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006). This clause does not apply if this contract is for the purchase of ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing, or (b) shipped in direct support of U.S. military (1) contingency or peacekeeping operations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

3. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

G52.203-002 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (MAY 2003)

(a) The provisions of 10 U.S.C. 2408 apply to this contract.

(b) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as:

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(c) The contractor may submit written requests to the Contracting Officer for waiver of 10 U.S.C. 2408 prohibitions. Requests shall clearly include:

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(d) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of a crime by contacting the Office of Justice Programs, Denial of Benefits Office, U.S. Department of Justice, telephone (202) 616-3507 .

G52.204-008 Notice of Litigation (AUG 2010) (Note 6 applies, except in subparagraph (a)(2).)

(a) With respect to litigation to which the contractor is a party relating to this contract

(1) The contractor shall, within three business days, notify the Contracting Officer of any litigation filed by a third party (including individual, partnership, or corporation) involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court to the extent such documents are not covered by a court-ordered seal or protective order.

(2) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, a

response to the subpoena.

(b) The contractor agrees to insert this clause in any subcontract under this contract.

G52.204-009 Release of Contract Information (JAN 2010 - modified) (Note 6 applies.)

(a) The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose expressly prohibited. This obligation will not expire upon completion or termination of this contract, but shall continue until rescinded by the contractor.

(b) The contractor must obtain the written approval of the Contracting Officer before releasing any information related to this contract. This information shall be limited to information referencing the work performed under this contract.

(c) No past performance information or other information regarding this contract shall be provided to any other Government, commercial or non-commercial entity without the approval of the Contracting Officer.

(d) The contractor agrees to insert this clause in any subcontract under this contract.

G52.209-005 Protection of Information (DEC 2011) (Applies if this contract is for development work that will require development contractors that require access to sensitive or proprietary information.)

(a) It is the Government's intent to ensure proper handling of sensitive information that will be provided to, or developed by, the contractor. The contractor shall protect the proprietary rights of industrial contractors whose data the contractor may receive in fulfilling its contractual commitments hereunder.

(b) Accordingly, the contractor agrees that it shall not disclose, divulge, discuss, or otherwise reveal information to anyone or any organization without the prior written approval of the Contracting Officer. Each individual requiring access to sensitive or proprietary information, including each of its current and future employees assigned to work on subcontracts issued hereunder, to execute an implementing nondisclosure agreement (NDA) before granting access to such information. These restrictions shall be made available to the contractor community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Information Meetings. A listing of the employees executing such an agreement shall be available to the Contracting Officer upon request. These restrictions shall apply to all contractors, subcontractors, suppliers, and vendors in the contractor community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Information Meetings.

(c) The contractor shall include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the provisions of this clause.

(d) The contractor shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, arising out of, or from, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data with restrictive legends received in performance of this contract or disclosed the data.

(e) The contractor shall allow the Government to review contractor compliance with these provisions or require such self-assessments or audits as the Government may determine to be necessary.

G52.209-006 Enabling Clause for Prime and Support Contractor Relationships (OCT 2011) (The Third Party Proprietary Information Clause shall be inserted in the names of the support contractors.)

(a) The Government currently has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to provide support directly to the Government in support of the Government's management and oversight of a program or effort. These companies (hereafter referred to as "support contractors") shall be required to incorporate into their respective contracts, and/or by separate agreements to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they provide support. *See Third Party Proprietary Information Agreement in this Contract*

(b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above. Cooperation includes, but is not limited to, observing technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access to the performance of the contract.

(c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test results; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly processes. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. To Government personnel only, the contractor must submit this request in writing to the Contracting Officer.

(d) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. The contractor shall ensure that the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors.

(e) The contractor and its subcontractors are not required to take contractual direction from support contractors.

(f) Clauses G52.227-005, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends and G52.209-008, Support Contractor Corporate Non-Disclosure Agreement, incorporated into their respective contracts, and/or by separate agreements to support contracts for this prime contract, require the support contractors to protect data and software related to this contract, and prohibit the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with the terms of the support contract. If disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree to be bound by the terms of the support contract. Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information agreement on an exception basis, and only after notifying the Contracting Officer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors shall require support contractors to do so. The Government shall require support contractors to do so in writing. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

(1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced by the disclosing party;

(2) The support contractor will require access to extremely sensitive business data; or

(3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause G52.209-008 does not adequately protect its proprietary information.

(h) Any proprietary information furnished to support contractors shall be:

(1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or

- (2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor provides a written version of the proprietary information and determine the extent of the proprietary claims; or
- (3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the support contractor marks the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
- (4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device and the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.
- (i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated that the information was:
 - (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
 - (2) In the public domain or becomes publicly known through no wrongful act of the support contractor;
 - (3) Proprietary information disclosed by the support contractor with the contractor's prior written permission;
 - (4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
 - (5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the support contractor;
 - (6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
 - (7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigations, and the contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order. In the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is necessary to comply with the law, regulation, or legislative authority.
- (j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or clause G52.209-008, Support Contractor Corporate Non-Disclosure Agreement shall be deemed to have been given on:
 - (1) The date received if delivered personally or by overnight courier;
 - (2) The third day after being deposited in the U.S. mail, postage prepaid; or
 - (3) The date sent if sent by facsimile transmission or e-mail with a digital copy.
- (k) The Government and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by the support contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry and the contractor's reasonable finding efforts may be allowable and allocable upon determination of the Contracting Officer after adjudicating the circumstances related to the disclosure.

G52.209-008 Support Contractor Corporate Non-Disclosure Agreement (FEB 2011)

(a) Definitions. As used in this clause:

- (1) *Proprietary information* means information contained in a bid or proposal, cost or pricing data, or any other information disclosed to the contractor, including software, or business data (as those terms are defined in clause G52.227-002) that is properly designated and/or marked as proprietary by the disclosing party in confidence or disclosed under restriction to prevent uncontrolled distribution.
- (2) *Sensitive information* means the Government's nonpublic planning, budgetary, and acquisition information (to include source selection information, contractor technical data or computer software delivered to the Government with limited or restricted rights (as defined in clause G52.227-002), and other information that is sensitive to the Government).
- (3) *Disclosing party* means the owner or developer of proprietary or sensitive information.
- (4) *Support contractor*, for purposes of this agreement, means a contractor under a contract the primary purpose of which is to furnish materials, studies, analysis and evaluations; systems engineering, technical direction and assistance; operations and maintenance activities; and other services, including the disclosure of proprietary information.
- (5) *Unauthorized disclosure* means the disclosure of sensitive or proprietary information to any party who does not have the authority or is not authorized to access the information.

(b) Purpose. This support contract requires the contractor to have access to sensitive information and the proprietary information of other contractors, and to protect such information from disclosure. The contractor understands that its unauthorized disclosure of sensitive or proprietary information is injurious to the interests of the Government and the owner of the information, and shall therefore protect such information from disclosure with no less than a reasonable standard of care for protection.

(c) Corporate Non-Disclosure Agreement. To relieve the contractor from the burden of negotiating separate agreements to access or use data from subcontractors, suppliers, and vendors, as well as U.S. Government program offices, the Government and contractor agree that this clause shall constitute a corporate non-disclosure agreement for the support contractor and its subcontractors regarding the use, handling, protection, and safeguarding of sensitive or proprietary information for as long as it remains subject to restrictions. This clause is meant to satisfy the non-disclosure agreement (NDA) requirements set forth in the contract on an exception basis, such as when the contractor is or may reasonably be expected to be a competitor of the disclosing party. The contractor agrees that this agreement is required by a disclosing party. Any such protections provided by such agreement for contractor proprietary information are in addition to those provided regarding contractor proprietary information.

(d) Third-Party Beneficiaries. In its role as a support contractor, the contractor agrees that each disclosing party (contractor, subcontractor, or subcontract, discloses proprietary information to the Government or to the support contractor is a third-party beneficiary of this clause and shall be entitled to the benefits of this clause.

(e) Liability for Unauthorized Disclosure. The contractor agrees that the unauthorized disclosure of sensitive or proprietary information constitutes a breach of this agreement and shall be liable for appropriate legal remedies. If the Government or the disclosing party seeks legal remedy for breach by the contractor in their role as a support contractor, the contractor agrees to:

- (1) It will not require the Government to be added as a necessary party to any enforcement action between the disclosing party and the contractor;
- (2) It will not seek a court to require either to post bond or to prove damages to seek injunctive relief;
- (3) To consent to federal jurisdiction for Government actions; and
- (4) That the disclosing party may bring a direct, civil action in law or equity against the support contractor in any state or federal court of competent jurisdiction.

(f) Cooperation. The contractor agrees in the event of an unauthorized disclosure, whether suspected or actual, to promptly notify the Government and the disclosing party, whether acting separately or independently, in support of any reasonable fact-finding efforts and mutually agreed fact-finding efforts will not be passed on to the Government or disclosing party.

(g) Flowdown. The requirements of this clause shall be flowed down to and included in all subcontracts directly chargeable to this contract within 30 business days of the award of any support subcontract. The notification shall identify the programs and/or contracts being supported, certified NDAs, and confirm that the terms of this clause have been accepted by the subcontractor.

(h) Implementing NDAs. Except as set forth elsewhere in this clause, the contractor shall make sensitive or proprietary information available to the Government. The contractor shall require each individual requiring access to sensitive or proprietary information to execute an implementing NDA before access. Each NDA shall include all the elements specified below.

AGREEMENT ON NON-DISCLOSURE OF ADVANCED SENSITIVE AND PROPRIETARY INFORMATION

Definitions

Proprietary Information means information contained in a bid or proposal, cost or pricing data, or any other information disclosed to the Government by a contractor in accordance with law, regulation, or commercial practice, and is held in confidence or disclosed under restriction to prevent disclosure.

Sensitive Information means non-public, Government planning, budgetary, and acquisition information (to include source selection information), and any contractor technical data or computer software furnished to the Government with less than unlimited rights as defined in FAR 1.01-2.1.

I, _____, have been assigned to perform advisory and assistance services for the U.S. Government. I understand that the work to be performed under contracts where this OCI Plan is in effect may require access to sensitive information and decision-making regarding future acquisitions. I understand that disclosure of such information would be injurious to the interests of the Government and that unauthorized transmission or revelation of this information could subject me to prosecution under Federal Procurement Integrity laws. I agree not to disclose, divulge, discuss, or otherwise reveal sensitive information or proprietary information associated with my duties. If I have a real or potential organizational conflict of interest, I will immediately report the circumstances to my supervisor and to the Contracting Officer. I further agree that I will be prohibited from personally participating in a proposal or contract to supply any supplies or services for which I performed a period of two years from the date I stop working under the related support contract, regardless of my employer. This prohibition includes any subcontractor, vendor, or consultant related to a prime contractor engaged in a proposal or contract for such supplies or services for which I performed a

Signature Date

Name

The contractor shall maintain a list of individuals who have signed NDAs and have access to sensitive or proprietary information as an annual certification of compliance with the terms of the plan.

(i) Identification of Proprietary Information. Proprietary information shall be protected pursuant to this clause if it is disclosed:

- (1) In writing and clearly marked on its face as "proprietary" or with other words of similar meaning;
- (2) Orally or visually (for instance, during a plant tour, briefing, or demonstration), and is identified as proprietary at the time of the oral or written disclosure. The contractor shall treat all such information as proprietary unless within fifteen days the contractor coordinates with the Government or disclosing party to determine the extent of the proprietary claims;
- (3) By electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the disclosure is clearly marked as such, with such marking to be displayed in human readable form along with any display of the proprietary information; or
- (4) By delivery of an electronic storage medium or memory device, and the disclosing party marks the storage medium or memory device in a way that identifies the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(j) Permissible Disclosure. Notwithstanding paragraph (e) above, the contractor is authorized to discuss and disclose sensitive or proprietary information to employees of that particular Government program office pursuant to this contract pursuant to this contract and the license granted to contractors supporting that same specific program), and other senior Government executives outside of the program offices provided that the disclosure is in accordance with the legend(s) affixed by the disclosing party, whether provided in its original form or in some other format.

(k) Exceptions to Liability for Unauthorized Disclosure. The support contractor shall not be liable for unauthorized disclosure of sensitive information if the contractor can provide documentation or other competent evidence that the information was:

- (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the Government or the disclosing party;
- (2) In the public domain or became publicly known through no wrongful act of the support contractor;
- (3) Sensitive information disclosed by the support contractor with the Contracting Officer's prior written approval;
- (4) Proprietary information disclosed by the contractor with the disclosing party's prior written permission;
- (5) Independently developed by the support contractor, subsequent to its receipt, without the use of any sensitive or proprietary information;
- (6) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the contractor;
- (7) Specifically provided in writing by the Government to the support contractor with an unlimited rights license; or
- (8) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigations, or other legal process, provided the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order. In the absence of a timely protective order, the support contractor furnishes only that minimum portion of the sensitive or proprietary information that is necessary to comply with the legal process.

(l) Licenses. Nothing contained in this clause, including the disclosure of any information hereunder, shall be construed as granting to the contractor any license, either express or implied, under any patent, copyright, trade secret, or other intellectual property right now or hereafter owned by the contractor.

(m) No Warranties. The contractor expressly agrees that each disclosing party who discloses proprietary information to the contractor makes no warranty, either express or implied, as to the accuracy, completeness, or technical or scientific quality of any of their proprietary information. Without restricting the generality of the foregoing, the contractor shall not be liable for unauthorized disclosure of sensitive information if the contractor can provide documentation or other competent evidence that the information was:

by any disclosing party as to the merchantability, fitness for a particular purpose, or non-infringement of patents, copyrights, trademarks information disclosed to the support contractor.

(n) Compliance with Export Control Laws. The contractor shall not export (to include disclosing or providing access to a foreign person) information furnished by the disclosing party without first complying with all applicable U.S. export control laws and regulations, including the Export Administration Regulations. The contractor will first obtain the written consent of the disclosing party who originated the proprietary information.

(o) Notices. For any notice required or contemplated by this clause, the support contractor has the burden of determining from the Contract providing written notice thereto. The Contracting Officer will provide a list of the points of contact for service of notices for all support contracts. *Clause for Prime and Support Contractor Relationships*. Notice shall be deemed to have been given on:

- (1) The date received if delivered personally or by overnight courier;
- (2) The third day after being deposited in the U.S. mail, postage prepaid; or
- (3) The date sent if sent by facsimile transmission or e-mail with a digital copy of the notice.

(q) Return of Sensitive and Proprietary Information. All proprietary information disclosed to the support contractor by the Government or Sensitive or proprietary information shall be destroyed or otherwise returned promptly at the request of the Government or a disclosing party from computer memory or data storage system, and the contractor will certify to the disclosing party that it has done so. Notwithstanding the foregoing, resolution purposes in its legal counsel's office, as well as copies of any reports prepared for and provided to the Government specific to the proprietary information.

(p) No Waiver. Failure by the Government or a disclosing party to enforce any requirement in this clause shall not constitute a waiver in a clause or part of such requirement is or becomes invalid or unenforceable, the remaining requirements shall remain in effect.

(r) Effective Date. The requirements of this clause shall be in force as of the effective date of this contract, and expire upon the completion, terminated or amended by the Contracting Officer and the contractor by supplemental agreement. The confidentiality requirements of this

G52.219-001 Utilization of Small Business Concerns (DEC 2011)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) Definitions. As used in this contract—

HubZone Small Business Concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled Veteran-owned Small Business Concern--

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more

service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) *Service-disabled Veteran* means a veteran, as defined in 38 U.S.C.101 (2), with a disability that is service-connected, as defined in 38 U.S.C.101 (16).

Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small Disadvantaged Business Concern means a small business concern that represents, as part of its offer that—

(1) (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.

Veteran-owned Small Business Concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101 (2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned Small Business Concern means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.

G52.223-001 Hazard Warning Labels (JAN 2004)

(a) *Hazardous material*, as used in this clause, is defined in the *Hazardous Material Identification and Material Safety Data* clause of this contract.

(b) The contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq.). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labeling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(6) Federal Food, Drug and Cosmetics Act;

(7) Consumer Product Safety Act;

(8) Federal Hazardous Substances Act; or

(9) Federal Alcohol Administration Act.

(c) The offeror shall list which hazardous material listed in the *Hazardous Material Identification and Material Safety Data* clause of this contract will be labeled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

G52.223-005 Prohibition on Storage and Disposal of Toxic and Hazardous Materials

(JAN 2004) (Note 7 applies)

(a) Definitions. As used in this clause:

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Government items, equipment, or facilities.

(2) *Toxic or hazardous materials* means those materials identified in the EPA Title III List of Lists.

(b) The contractor is prohibited from transporting, storing, disposing, or using toxic or hazardous materials in performing this contract except for those materials listed in (c) below or when authorized in writing by the Contracting Officer.

(c) The following toxic and hazardous materials are authorized for use in the performance of this contract:

Toxic Material – None

52.223-006 Contractor Compliance with Environmental Safety and Health, and System Safety Requirements (OCT 1997) (Note 7 applies)

(a) In performing work under this contract, the contractor shall comply with-

(1) All applicable Federal, State, and local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;

(2) Any regulations, policies and procedures in effect at any Government facility where work will be performed;

(3) Any contract specific requirements; and

(4) Any Contracting Officer direction.

(b) *Conflicting Requirements*. The contractor shall provide written notification to the Contracting Officer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule, and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that the Contracting Officer or the contractor may have to coordinate with in order to implement the solution. The Contracting Officer will review the notification and provide written direction. Until the Contracting Officer issues that direction, the contractor will continue performance of the contract, to the extent practicable, giving precedence in the following order to requirements that originate from:

(1) Federal, state, and local laws, regulations, policies and procedures;

(2) Government facility regulations, policies and procedures; and

(3) Contract specific direction.

(c) Material Condition of Contract. Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the contractor to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.

52.223-007 Elimination of Class I Ozone Depleting Substances (ODS) (APR 2004)

(Note 2 applies)

(a) Unless authorized under paragraph (b) below, use of a Class I ODS (as defined in 40 CFR 82) is prohibited under this contract.

(b) Where considered essential, specific approval has been obtained to require use of the following substances:

Substance Application/Use Quantity

None

(c) The offeror/contractor shall notify the Contracting Officer if any Class I ODS not specifically listed above is required in the performance of this contract.

52.227-001 Technical Data and Computer Software: Commercial Items (FEB 2011)

(Rights shall flow to the Government. LOCKHEED MARTIN is granted a limited license to use data and software for this program.)

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(2) *Commercial item* means:

(i) Any item, other than real property, that customarily is used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology or performance, and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(iii) Any item that would satisfy a criterion expressed in paragraph (i) or (ii) of this definition, but for:

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “*Minor modifications*” means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;

(v) Installation services, maintenance services, repair services, training services, and other services if—

(A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks

performed or specific outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services—

(A) “*Catalog price*” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) “*Market prices*” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can be substantiated through competition or from sources independent of the offerors.

(vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or (viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

(3) *Computer database* means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(4) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(5) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. The term does not include computer databases or computer software documentation.

(6) *Computer software documentation* means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.

(7) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(8) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. §403(8)). This term does not include computer software or business data.

(b) License in Commercial Technical Data.

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data relating to a commercial item, and to permit others to do so, that:

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only.

(3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor’s written permission unless a release, disclosure, or

permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.

(d) Additional License Rights. The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights in technical data or computer software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.

(e) Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no

liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

52.227-007 Rights in Bid or Proposal Information (JAN 2004)

(a) Definitions. The terms "technical data" and "computer software" are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Government Rights to Contract Award. By submission of its offer, the offeror agrees that the Government:

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person, including potential evaluators, unless that person has been authorized by the Contracting Officer to receive such information.

(c) Government Rights Subsequent to Contract Award. The contractor agrees:

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(d) Government-Furnished Information. The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information Available Without Restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party, or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. The contractor shall include this clause in all subcontracts or similar contractual instruments, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

52.245-001 Contract-Accountable Government Property: Responsibilities, Use, Reporting, and Administration (DEC 2011-Modified)

(a) **General Requirements.** The Contractor shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR Part 45. All items provided to the Contractor or acquired by the Contractor using contract funds, including Government Furnished Property (GFP), Government Furnished Equipment (GFE), Government Furnished Material (GFM), Contractor-Acquired Material (CAM), Contractor-Acquired Property (CAP) and facilities are considered to be Government property.

(b) **Property Analyst.** The Contracting Officer has delegated property administration authority to a Government Property Analyst. The Property Analyst will address all contract issues through the LOCKHEED MARTIN assigned Property Administrator. The LOCKHEED MARTIN Property Administrator will function as the customer Property Analyst for this Contract.

(c) **Contractor Property Representatives.** The Contractor shall provide the name, address, and telephone number of the company official responsible for establishing and maintaining control of Government property under this contract to the LOCKHEED MARTIN Procurement Representative within thirty (30) days after receipt of this contract.

(d) **Government Property List.** The Government Property List in this contract identifies all Government property offered to the contractor on a no-charge-for-use basis to perform this contract with the dates of availability for each item. The LOCKHEED MARTIN Procurement Representative will update the list as changes occur so that it always represents the definitive list of all Government property authorized for transfer to the contractor under this contract, whether or not the items have actually been transferred. The Government Property List is not intended to include all Government property accountable to this contract; the inventory of contract-accountable Government property is maintained in the Consolidated

Contractor Database (CCD) based on the contractor's quarterly property reports.

(e) **Property Transfers.** The contractor must obtain approval through the LOCKHEED MARTIN Procurement Representative before transfers of property occur, except for Contractor Acquired Material (CAM) with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). All other transfers between contracts must be documented in a DD Form 1149, DD Form 250, LOCKHEED MARTIN Procurement Representative letter, or contract modification. This documentation shall serve as the only record necessary to document transfers.

(f) **Government Property Accountable to Other Government Contracts.** *This paragraph does not apply to Government-furnished material.* The contractor may request authorization to use Government property in their possession accountable to other U.S. Government contracts if the Contracting Officer of the other contract provides written authorization for rent-free, non-interference use on this contract. Such requests shall be submitted via the LOCKHEED MARTIN Procurement Representative for processing and approval. If use is authorized by both the Contracting Officer of this Prime Contract and the accountable contract, in the event of Loss, Theft, Damage or Destruction (LTDD), the using contract shall be responsible for the repair or cost of replacement of Government property. If use is authorized, it shall be in accordance with the terms and conditions of the accountable contract as well as the Contracting Officers' approval letters.

(g) **Title.** Title to all Government-owned property remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to the LOCKHEED MARTIN Property Administrator a list of all Government property accountable to the contract at that time. The list shall describe each item, including the manufacturer, model number, date acquired, cost, and condition code. The list shall be submitted within 60 calendar days after completion or termination of the contract.

(h) **Promotional Items.** The Contractor shall promptly identify to the LOCKHEED MARTIN Procurement Representative any promotional items (stand-alone or otherwise) received in conjunction with their purchases on behalf of the Government. Upon receipt and adjudication by the Government, the Contractor shall follow the direction of the LOCKHEED MARTIN Procurement Representative with regard to the promotional items.

(i) **Audits and Analyses.** The LOCKHEED MARTIN Property Administrator shall audit/analyze the Contractor's processes, controls, policies, accountability, and

administration of Government property. These audits/analyses shall be performed in accordance with the procedures in the Contract-Accountable Property Manual. Audit/analysis teams will be composed of property professionals and may include subject matter experts in contracting, logistics, accounting, and finance. At the discretion of the LOCKHEED MARTIN Property Administrator, the audit may also include the Government Property Analyst.

(j) Reporting.

(1) **Quarterly Reports.** The Contractor shall submit accurate quarterly reports, formatted correctly and on schedule in accordance with SDRL M026 and its DID. All property accountable to this contract and in the possession of the Contractor or subcontractors/vendors shall be included in the report. Failure to provide required reporting may result in termination of this Contract, suspension of payment by LOCKHEED MARTIN, or other action deemed appropriate by the LOCKHEED MARTIN Procurement Representative.

(2) **Annual Inventory Reports.** The contractor shall submit the results of their physical inventory (to include all inventories performed by the Contractor and each subcontractor) to the LOCKHEED MARTIN Procurement Representative in accordance with SDRL M025 and its DID.

(k) **Special Test Equipment.** The Contractor must obtain Contracting Officer approval through LOCKHEED MARTIN before acquiring or fabricating special test equipment at Government expense unless the equipment is itemized in this contract.

(l) **Flowdown.** The Contractor shall include this clause in all subcontracts.